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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/698,665 | 10/30/2003 | Iyad Qumei | 101USMD76 | 3748 |

7590 04/09/2007
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| EXAMINER |
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WANG, RONGFA PHILIP

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| ART UNIT | PAPER NUMBER |
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2191

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|----------------------------------------|------------|---------------|
| 3 MONTHS | 04/09/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/698,665

Applicant(s)

QUMEI ET AL.

Examiner

Philip Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detail Action

1. This office action is in response to the application filed on 10/30/2003.
2. Claims 1-20 are pending.

Priority

3. The priority date considered for this application is 10/30/2003.

Specification

4. The disclosure is objected to because of the following informalities:
[0033], line 3, "the mobile handset 129" should be "the mobile handset 107"; line 4, "DM server" lacks full description of what DM is.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-7, and 16-20 are rejected under 35 U.S.C. 101 because the claimed subject matter are directed to non-statutory subject matter.

Per claims 1 and 16, under the condition that the update package is not appropriate, no updating is performed, therefore, the claims do not produce concrete, tangible, and

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useful results and are directly directed to abstract ideas. . Claims 2-7 depend on claim 1 and do not appear to remedy this deficiency. Claims 17-20 depend on claim 16 and do not appear to remedy this deficiency either.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 7, 14 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "the status" in "the status is stored". There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 14, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 15 recites the limitation "the update package container" in "the update package container created" and "the update package container based upon". There is insufficient antecedent basis for this limitation in the claim.

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Further claim 16 recites the limitation of "A mobile handset with non-volatile memory that is capable of ...". The use of the language "is capable of" renders the claim indefinite. The use of the language "capable of" only shows that the element potentially can do this. It's only intended use. However, It does not explicitly require the limitation following "capable of" to be part of the claim. Therefore, it renders the scope of the claim indefinite and vague.

Claims 17-20 depend on claim 16 and suffer the same deficiency.

7. According to the Specification, pages 13-20, where the specification of new generic Mime-types are disclosed, it appears that Bindu Rama Rao has contributed a lot to the material of this invention, however he is not listed as one of the inventors. The Applicant is required to clarify if Bindu Rama Rao is one of the inventors of this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claims 1, 6-15 are rejected under 35 U.S.C. 102(a) as being anticipated by C. Enrique Ortiz ("Introduction to OTA Application Provisioning", November 2002, <http://developers.sun.com/techtopics/mobility/midp/articles/ota/> retrieved on 3/29/2007.).

As per claim 1:

Ortiz discloses

- using a mime-type associated with the update package to determine if the update package received is appropriate for updating the mobile handset;
- and invoking an appropriate update agent, based on the mime-type, for updating the mobile handset (Figure 1. shows a method for updating cell phone. Page 10 discloses defining MIME types for JAD and JAR files in headers (see table 3) so the client software (AMS) can use this information for installation (paragraph below table 3)).

As per claim 6:

the rejection of claim 1 is incorporated;

Ortiz discloses

- wherein the method further comprises using the mime-type associated with the update package to determine where the update package needs to

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be stored in non-volatile memory (Figure 1. shows a method for updating cell phone. Page 10 discloses defining MIME types for JAD and JAR files in headers (see table 3) so the client software (AMS) can use this information for installation (paragraph below table 3).

As per claim 7:

the rejection of claim 1 is incorporated;

- wherein the method further comprises using the mime-type associated with the update package to determine where the status is stored in the mobile handset following the invoking of an appropriate update agent(Figure 1. shows a method for updating cell phone. Page 10 discloses defining MIME types for JAD and JAR files in headers (see table 3) so the client software (AMS) can use this information for installation (paragraph below table 3).

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As per claim 8:

Ortiz discloses

- delivery means for the delivery of update packages;
- consumption means for consuming update packages;
- the open update framework that provides the consumers of update packages access to a large variety of update packages in an interoperable manner (see Figure 1, where provisional portal interoperates with a mobile device to update packages).

As per claim 9:

the rejection of claim 8 is incorporated;

Ortiz discloses

- the producers of update packages designating a mime-type with the update packages; and the consumers of update packages employing the mime-type to determine how to consume the update packages (Page 10 discloses defining MIME types for JAD and JAR files in headers (see table 3) so the client software (AMS) can use this information for installation (paragraph below table 3)).

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As per claim 10:

the rejection of claim 9 is incorporated;

Ortiz discloses

- the producers of update packages wherein the producers of update packages are update package generators capable of generating update packages based on an old version of firmware or software and a new version of the firmware and software and associating a mime-type with the update packages (p. 2, bullet item A. "...support content versioning...").

As per claim 11:

the rejection of claim 9 is incorporated;

Ortiz discloses

- the consumers of update packages wherein the consumers of update packages are update agents in mobile handsets (p. 2, bullet item D., see application management system(AMS).).

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As per claim 12:

the rejection of claim 9 is incorporated;

Ortiz discloses

- the consumers of update packages wherein the consumers of update packages are download agents or browsers in mobile handsets (p. 2, bullet item D., see application management system(AMS)).

As per claim 13:

the rejection of claim 9 is incorporated;

Ortiz discloses

- the consumers of update packages wherein the consumers of update packages are handoff agents in mobile handsets (p. 2, bullet item D., see application management system(AMS)).

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As per claim 14:

the rejection of claim 9 is incorporated;

Ortiz discloses

- further comprising a generator that creates one or more update packages, determines the metadata, associates an appropriate mime-type with each of the update packages generated, populates the metadata with the mime-type, determines or computes security information such as signatures, and incorporates them into an update package container (p. bullet item "Security").

As per claim 15:

the rejection of claim 11 is incorporated;

- further comprising a content server that serves as a repository of update packages for distribution to the mobile handsets; a mime-type associated with the update package container created by the generator; the content server processing the update package container based upon the mime-type associated update package container (Figure 1. shows a method for updating cell phone. Page 10 discloses defining MIME types for JAD and JAR files in headers (see table 3) so the client software (AMS) can use

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this information for installation (paragraph below
table 3)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-4, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over C.

Enrique Ortiz ("Introduction to OTA Application Provisioning", November
2002,

<http://developers.sun.com/techttopics/mobility/midp/articles/ota/>

retrieved on 3/29/2007.) in view of Oommen (A framework for integrated
management of mobile-stations over-the-air", Integrated Network
Management Proceedings, 2001 IEEE/IFIP International Symposium on 14-
18 May 2001 Page(s):247 - 256)..

As per claim 2:

the rejection of claim 1 is incorporated;

Ortiz discloses

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- wherein the mobile handset comprises an update agent and the invoking an appropriate update agent comprises determining which of the update agent is capable of processing the update package and invoking one of the update agent that is determined to be capable of processing the update package (Figure 1. shows a method for updating cell phone. Page 10 discloses defining MIME types for JAD and JAR files in headers (see table 3) so the client software (AMS) can use this information for installation (paragraph below table 3))..

Ortiz does not disclose

- a plurality of update agents.

However, Oommen discloses

- a plurality of update agents (section 3. Mobile Management Functions, first para., "Basic OTAHM function...Over the Air Service Provisioning (OTASP), Over the Air Administration (OTAPA), Over the Air Software Download (OTASD)..." where these three types of update are for firmware, software, and configuration of a mobile handset.) .

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Oommen into the teachings of Ortiz to include the above limitation. The modification would be obvious to one of

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ordinary skill in the art to want to enable mobile users to choose a service provider and provision the service, subscribe to new services and download software as suggested by Oommen (see Introduction).

As per claim 3:

the rejection of claim 2 is incorporated;

Oommen discloses

- wherein the mobile handset comprises firmware, software or configuration and wherein the invoking one of the plurality of update agents comprises invoking an appropriate one of the plurality of update agents to perform an update of the firmware, software or configuration of the mobile handset (section 3. Mobile Management Functions, first para., "Basic OTAHM function...Over the Air Service Provisioning (OTASP), Over the Air Administration (OTAPA), Over the Air Software Download (OTASD)..." where these three types of update are for firmware, software, and configuration of a mobile handset.).

As per claim 4:

the rejection of claim 3 is incorporated;

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Oommen discloses

- wherein a different mime-type is associated with update packages that are used to update firmware, update packages that are used to update software and update packages that are used to update configuration in the mobile handset (section 3. Mobile Management Functions, first para., "Basic OTAHM function...Over the Air Service Provisioning (OTASP), Over the Air Administration (OTAPA), Over the Air Software Download (OTASD)..." where these three types of update are for firmware, software, and configuration of a mobile handset.) ..

As per claim 16:

Ortiz discloses

A mobile handset with non-volatile memory that is capable of processing an update package, the mobile handset comprising:

- a download agent or a browser that uses a mime-type associated with the update package to determine if the update package received is appropriate for an update activity or is currently supported; a handoff agent that determines where the update package with an associated

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mime-type must be stored in non-volatile memory when it is downloaded (p. 2, bullet item D. "...downloading the application is...handled by...the application management system (AMS)...Based on information found in the downloaded application descriptor, the AMS automatically downloads the application");

Ortiz does not disclose

- an update agent that uses the mime-type related information to determine if the update package is appropriate for the firmware, software or configuration of the mobile handset

However, Oommen discloses

- an update agent that uses the mime-type related information to determine if the update package is appropriate for the firmware, software or configuration of the mobile handset (section 3. Mobile Management Functions, first para., "Basic OTAHM function...Over the Air Service Provisioning (OTASP), Over the Air Administration (OTAPA), Over the Air Software Download (OTASD)..." where these three types of update are for firmware, software, and configuration of a mobile handset.).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Oommen into the teachings of

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Ortiz to include the above limitation. The modification would be obvious to one of ordinary skill in the art to want to enable mobile users to choose a service provider and provision the service, subscribe to new services and download software as suggested by Oommen (see Introduction).

As per claim 17:

the rejection of claim 16 is incorporated;

Ortiz discloses

- wherein the update agent is selected from a plurality of available agents based on the mime-type of the update package (p. 2, bullet item D. see AMS for download, installation of packages, "...downloading the application is...handled by...the application management system (AMS)...Based on information found in the downloaded application descriptor, the AMS automatically downloads the application").

As per claim 18:

the rejection of claim 16 is incorporated;

Ortiz discloses

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- wherein the handoff agent is selected from a plurality of available agents based on the mime-type of the update package (p. 2, bullet item D. see AMS for download, installation of packages, "...downloading the application is...handled by...the application management system (AMS)...Based on information found in the downloaded application descriptor, the AMS automatically downloads the application").

As per claim 19:

the rejection of claim 16 is incorporated;

Ortiz discloses

- wherein the download agent is selected from a plurality of available agents based on the mime-type of the update package (p. 2, bullet item D. see AMS for download, installation of packages, "...downloading the application is...handled by...the application management system (AMS)...Based on information found in the downloaded application descriptor, the AMS automatically downloads the application").

As per claim 20:

the rejection of claim 16 is incorporated;

- wherein the mime-type of the update package has an associated magic number that is included in the update package (p. 6 2nd para., "The download server can also customize the discovery phase to the characteristics of the user's device by analyzing the HTTP headers that come from it. For example, the User-Agent provides information on the device model and the software version..." The examiner interprets magic number as an identifier hat identifies a file. In this case, the software version number uniquely identifies a file.).

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over C. Enrique Ortiz ("Introduction to OTA Application Provisioning", November 2002, <http://developers.sun.com/techttopics/mobility/midp/articles/ota/> retrieved on 3/29/2007.) in view of Oommen (A framework for integrated management of mobile-stations over-the-air", Integrated Network

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Management Proceedings, 2001. IEEE/IFIP International Symposium on 14-18 May 2001 Page(s):247 - 256) and further in view of Alcazar et al. (US PGPub. No. 2004/0237083).

As per claim 5:

the rejection of claim 4 is incorporated;

Ortiz and Oommen does not discloses

- registering the update agent and associated mime-types such that the mobile handset is able to determine the mime-types supported or processed by the update agent.

However, Alcazar et al. disclose

- registering the update agent and associated mime-types such that the mobile handset is able to determine the mime-types supported or processed by the update agent ([0032], "... the application package handler may be a mime handler that is registered...").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Alcazar into the teachings of Alcazar et al. to include the above limitation. The modification would be obvious to one of ordinary skill in the art to want to enable progressive installation of software as suggested by Alcazar et al. (see Abstract).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

It is noted that any citation [[s]] to specific, pages, columns, lines, or figures in the prior art references and any interpretation of the references should not be considered to be limiting in any way. A reference is relevant for all it contains and may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. [[See, MPEP 2123]]

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8:00AM - 4:00PM. Any inquiry of general nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Steedman
Primary Examiner